

1 ☐ EXPEDITE  
2 ☐ Hearing is Set

3 Date:  
4 Time:

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7 **STATE OF WASHINGTON**  
8 **THURSTON COUNTY SUPERIOR COURT**

9 PREMERA, a Washington non-  
10 profit miscellaneous corporation;  
11 and PREMERA BLUE CROSS, a  
12 Washington non-profit corporation,

13 Petitioners,

14 v.

15 MIKE KREIDLER, Insurance  
16 Commissioner for the State of  
17 Washington,

18 Respondent.

NO. 03-2-00112-8

DECLARATION OF  
JAMES E. TOMPKINS

19 I, James E. Tompkins, do hereby declare that the following facts are personally  
20 known to me and, if called upon to do so, I would testify to them.

21 1. I am now, and at all times pertinent herein was, a citizen of the United  
22 States and a resident of the State of Washington, over the age of eighteen (18) years,  
23 and competent to testify in a court of law.

24 2. I am the Assistant Deputy Insurance Commissioner for Company  
Supervision at the Office of Insurance Commissioner of the State of Washington (OIC).  
In that capacity, I am responsible for reviewing the application filed by Premera in the

1 administrative proceeding before the Insurance Commissioner of the State of  
2 Washington, *In the Matter of the Application Regarding the Conversion and*  
3 *Acquisition of Control of Premera Blue Cross and its Affiliates*, Docket No. G02-45  
4 (“Proposed Transaction”). The subject of the Proposed Transaction is Premera’s  
5 request for the approval of the Insurance Commissioner to convert from non-profit to  
6 for-profit status. Part of my duties in connection with the review of the Proposed  
7 Transaction is to make a determination as to whether Premera’s Form A Statement is  
8 complete within the meaning of RCW 48.31B.015 and 48.31C.030.  
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10 3. Based upon my review of Premera’s Form A Statement, a copy of which  
11 without exhibits I have attached hereto and incorporated herein as Exhibit “A”, I  
12 identified the following deficiencies in the Statement that were identified prior to  
13 November 26, 2002 that remain outstanding:  
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15 4. The Accenture survey dated November 2001. This survey is referred to in  
16 Premera’s Business Plan at pages 19 to 20 and 25 that is contained in Exhibit E-7 to the  
17 Form A Statement. I have attached a copy of the pertinent pages (redacted) of Exhibit  
18 E-7 and incorporate it herein as Exhibit “B”. This item was identified to Premera and  
19 requested in deficiency letters sent to Premera dated October 7, 2002 and November 19,  
20 2002. I have attached copies of the October 7, 2002 and November 19, 2002 deficiency  
21 letters and incorporated them herein as Exhibits “C” and “D”, respectively. A complete  
22 copy of the survey is required under RCW 48.31C.030(2)(a)(ii) and (2)(d) and WAC  
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1 284-18A-910, Item 5, as part of the Form A Statement. *See also* 48.31B.015(2)(a)(ii)  
2 and (2)(d); 284-18-910, Item 5.

3 5. Premera represented in its response to the October deficiency letter  
4 (Exhibit “C”) that a copy of the survey was publicly available at the following website:

5 <http://www.mdinsurance.state.md.us/documents/E1-A6IMPACTSTATEMENT.pdf>. I

6 have attached a copy of Premera’s response without exhibits and incorporated it herein  
7 as Exhibit “E”. The document found at this website was a January 2002 Accenture

8 report and not the required November 2001 survey. Upon a second request for the  
9 survey, Premera represented in its response to the November deficiency letter (Exhibit

10 “D”) that a copy of the survey had been provided to the states’ consultants (Bates  
11 numbers 0009028 – 0009079). I have attached a copy of Premera’s response without

12 exhibits and incorporated it herein as Exhibit “F”. The document that was provided  
13 was also a copy of the January 2002 Accenture report and not the required November

14 2001 survey. The November 2001 survey was specifically referenced and relied upon  
15 by Premera in its Business Plan, which it submitted as part of its Form A Statement.

16 According to Premera one of its primary reasons for seeking the conversion and change  
17 in control as stated in the Overview of New PREMERA Operations and Strategy and

18 Rationale for Conversion (Exhibit E-7 to the Form A Statement) is the amount of  
19 additional capital funds it will need now and in the future. The information contained in

20 the Overview states that it is relying on the November 2001 Accenture study to arrive at  
21 these amounts. Hence, it is important that the Insurance Commissioner also have access  
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1 to the same underlying data that Premera relied upon in concluding that it needs to  
2 convert and have a change in control. Therefore, the Form A Statement is not complete  
3 and is deficient without it.

4         6.     Description of Stock Ownership Plans (Exhibit G-10). This item was  
5 identified to Premera and requested in a deficiency letter sent to Premera dated October  
6 7, 2002 (Exhibit “C”). In response to the deficiency letter, Premera submitted a  
7 document that merely described “certain limitations and restrictions” that would be  
8 applied to the anticipated Stock Ownership Plans for officers, directors and employees  
9 of Premera. I have attached a copy of the document (Exhibit G-10 to the Form A  
10 Statement) and incorporated it herein as Exhibit “G”. It failed to provide the terms of  
11 the intended plans. Premera’s Stock Ownership Plans are required to be submitted  
12 under RCW 48.31C.030(2)(e) and (2)(g), and WAC 284-18A-910, Items 7(c) and 8(c),  
13 as part of the Form A Statement. *See also* 48.31B.015(2)(e) and (2)(g); 284-18-910,  
14 Items 7 and 8.

15         7.     The consultants retained by the OIC and the Alaska Division of Insurance  
16 to assist in the review of the Proposed Transaction have requested details relating to the  
17 proposed Stock Ownership Plans particularly as they relate to executive compensation  
18 post-conversion. Specifically, data request WA 107 dated October 22, 2002 required  
19 that Premera provide a “[s]ummary of proposed stock grants, options, or other equity-  
20 based incentive programs for Premera directors, elected officers, and key members of  
21 management, including proposed conditions/restrictions regarding grants, options, and  
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1 aggregate holdings for this group.” In addition, data request WA 105, also dated  
2 October 22, 2002, required production of a “[s]ummary of Premera planned  
3 modifications to management compensation levels, bonuses, and director fees, either  
4 arising out of reorganization or planned for implementation post reorganization.” I  
5 have attached a copy of page 12 from the data request matrix dated September 2, 2003  
6 showing data requests WA 105 and 107 and incorporated it herein as Exhibit “H”.  
7 Premera’s response to these requests has consisted of a refusal to provide the terms of  
8 the Stock Ownership Plans it intends to adopt for its officers, directors, and employees.  
9 Rather, Premera has submitted in response to the deficiency letter and the experts’  
10 requests only general parameters of such plans found at Exhibit G-10 to Premera’s  
11 Form A Statement (Exhibit “G”). Premera has represented that it has not approved any  
12 stock programs or made any determination with respect to any stock programs that may  
13 be adopted in the future. Because Premera stated that it will not provide the terms and  
14 details of its Stock Ownership Plans and making further requests for the plans appeared  
15 futile, the data requests were closed and marked complete. However, the Form A  
16 Statement is not complete and is deficient without the Stock Ownership Plans that  
17 Premera intends to adopt.

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21 8. Schedules 1 (Assets) and 2 (Assumed Liabilities) to Exhibit D contained  
22 in Exhibit G-11 to the Form A Statement. These items were identified to Premera and  
23 requested in deficiency letters sent to Premera dated October 7, 2002 (Exhibit “C”) and  
24 November 19, 2002 (Exhibit “D”). One of the important aspects to be considered in a

1 change in control of a health carrier and/or insurance company is the amount, if any, of  
2 any assets and liabilities that will be withdrawn from the company as a result of the  
3 transaction. It is very important and required by RCW 48.31B.015 and 48.31C.030 that  
4 the Insurance Commissioner determine that the company will be financially viable  
5 upon conclusion of the transaction. Therefore, if the Insurance Commissioner does not  
6 receive the information regarding the amount and nature of the assets and liabilities that  
7 will be withdrawn from the company as a result of the transaction, he is unable to make  
8 this determination. Completed Schedules are required under RCW 48.31C.030(2)(d)  
9 and (2)(g), and WAC 284-18A-910, Items 5 and 8, as part of the Form A Statement.  
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11 *See also* 48.31B.015(2)(d) and (2)(g); 284-18-910, Items 5 and 8.

12           9.     These Schedules pertain to the assets and liabilities that Premera intends  
13 to transfer with its current Alaska operations to its proposed Alaska for-profit  
14 subsidiary. The documents provided do not list the assets and liabilities. I have  
15 attached a copy of the pertinent documents and incorporated them herein as Exhibit "I".  
16 Premera merely states in the documents that the proposed transfer will comply with the  
17 "applicable minimum capital, surplus and risk based capital requirements imposed by  
18 the State of Alaska Insurance Code" and "shall include such liabilities arising from  
19 subscriber and provider contracts issued or entered into by [Premera] with Alaska-  
20 based subscribers and providers and which remain in effect as of the Closing Date  
21 hereof." Although other materials provided by Premera may be relevant, Premera has  
22 failed to specifically address the Form A Statement requirements with respect to these  
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1 Schedules; therefore, the Form A Statement is not complete and is deficient in this  
2 respect.

3 I declare under penalty of perjury under the laws of the State of Washington  
4 that the foregoing is true and correct.

5 Dated September 11, 2003 at Tumwater, Washington.  
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9 JAMES E. TOMPKINS  
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